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EASTERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DEPARTMENT OF PARKS AND
RECREATION FOR THE STATE OF
CALIFORNIA,

NO. 04-CV-1533 FCD JFM

Plaintiff,

v.

MEMORANDUM AND ORDER

BAZAAR DEL MUNDO, INC., a
California Corporation, and
DOES 1-50, inclusive,

Defendant.

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This matter is before the court on defendant Bazaar del Mundo, Inc.'s ("BdM") motion to transfer venue pursuant to 28 U.S.C. section 1404(a). Plaintiff, the Department of Parks and Recreation for the State of California ("the State"), set forth six causes of action against BdM in its complaint, including: (1) declaratory judgment of trademark ownership; (2) rectification of trademark; (3) fraudulent federal trademark infringement; (4) unfair business practices; (5) false advertising; and (6) false

1 designation of origin.

2 The State originally filed its complaint in Sacramento
3 County Superior Court, and the case was properly removed to this
4 court. BdM now seeks to transfer this matter to the United
5 States District Court for the Southern District of California.
6 For the reasons set forth below, the court grants BdM's motion to
7 transfer venue pursuant to 28 U.S.C. section 1404(a).¹

8 **BACKGROUND**

9 The underlying dispute between the State and BdM involves a
10 contest for intellectual property rights in connection with the
11 operation of two restaurants located in San Diego. (Def.'s
12 Memorandum of Points and Authorities in Support of its Motion to
13 Transfer Venue ("Def.'s Memo. of P & A") at 1.) In its
14 complaint, the State alleges ownership of two trademarks used by
15 BdM, namely "Casa De Pico" and "Casa De Bandini." (Id.) These
16 marks are the names of two restaurants BdM has continuously
17 operated in Old Town San Diego since 1971 and 1980, respectively.
18 (Id. at 3.)

19 The State's complaint alleges BdM fraudulently registered
20 with the United States Patent and Trademark Office and the
21 California Secretary of State two names, "Casa De Pico" and "Casa
22 De Bandini," lawfully owned by the State. (Id. at 1.) The State
23 seeks, *inter alia*, injunctions against BdM and a judicial
24 declaration that the State is entitled to the exclusive use and
25 ownership of the trademarks. (Pl.'s Complaint at 10.)

26
27 ¹ Because oral argument will not be of material
28 assistance, the court orders this matter submitted on the briefs.
See E.D. Cal. Local Rule 78-230(h).

STANDARD

Where venue is proper in the district in which an action is brought, the court may transfer the action "to any other district or division where it might have been brought" out of concern for "convenience of the parties and witnesses," and "in the interest of justice." 28 U.S.C. § 1404(a) (2003). Where an action might have been brought in another district, the decision to transfer is left to the sole discretion of the district court. Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir. 1979). Section 1404(a) grants the district court broad discretion "to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" Stewart Organization v. Ricoh Corp., 487 U.S. 22, 29 (1988), quoting Van Dusen v. Barrack, 376 U.S. 612, 622 (1964); accord Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000).

The dispositive factors of party convenience, witness convenience, and the interest of justice are to be interpreted broadly to allow for consideration of the facts of each case. E. & J. Gallo Winery v. F. & P. S.p.A., 899 F. Supp. 465, 466 (E.D. Cal. 1994). The moving party has the burden of showing that "the convenience of the parties and witnesses" and "the interest of justice" require transfer to another district. Commodity Futures Trading Comm'n, 611 F. 2d at 279.

Transfer may not be ordered if the result merely shifts the inconvenience from one party to another. Reed Elsevier, Inc. v. Innovator Corp., 105 F. Supp. 2d 816, 821 (S.D. Ohio 2000). The party seeking the transfer has the burden of showing that trial

1 where the action is pending will result in a clear balance of
2 inconveniences to it. Harris Trust & Sav. Bank v. SLT Warehouse
3 Co., Inc., 605 F. Supp. 225, 227 (N.D. Ill. 1985).

4 **ANALYSIS**

5 The district court may transfer an action pursuant to
6 Section 1404(a)² if two requirements are met. First, the
7 proposed transferee district must be one in which the action
8 "might have been brought" originally. 28 U.S.C. § 1404(a).
9 Second, the court must determine that the transfer of the action
10 will enhance the convenience of the parties and witnesses, and is
11 in the interests of justice. Id.; See also 17 Moore's Federal
12 Practice, § 111.11 (Matthew Bender 3d ed. 2003).

13 **1. This Action Could Have Been Brought in the Southern**
14 **District of California**

15 Plaintiff does not dispute the fact that this action could
16 have been brought in the Southern District of California. Venue
17 would have been proper pursuant to 28 U.S.C. section 1391(b)³.
18 BdM resides in the Southern District (Powers Decl., ¶ 13), and an
19 overwhelming number of the events giving rise to the State's
20 complaint occurred in the Southern District. Therefore, under

21 ² 28 U.S.C. § 1404(a) states, "For the convenience of
22 parties and witnesses, in the interest of justice, a district
23 court may transfer any civil action to any other district or
24 division where it might have been brought."

25 ³ A civil action wherein jurisdiction is not founded
26 solely on diversity of citizenship may, except as otherwise
27 provided by law, be brought only in (1) a judicial district where
28 any defendant resides, if all defendants reside in the same
State, (2) a judicial district in which a substantial part of the
events or omissions giving rise to the claim occurred, or a
substantial part of property that is the subject of the action is
situated, or (3) a judicial district in which any defendant may
be found, if there is no district in which the action may
otherwise be brought. 28 U.S.C. § 1391(b)

1 subsections (1) and (2) of 28 U.S.C. section 1391(b), the State
2 could have initially filed its complaint in the Southern District
3 of California.

4 **2. Convenience of the Parties and Witnesses and the**
5 **Interests of Justice**

6 In Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834,
7 843 (9th Cir. 1986), the Ninth Circuit identified several factors
8 a court may consider in determining whether to grant a transfer
9 under Section 1404(a): (1) the convenience of the parties and
10 witnesses; (2) the relative ease of access to sources of proof;
11 (3) the possibility of viewing the premises; (4) the local
12 interest in having localized disputes decided at home; (5) the
13 unfairness of burdening citizens in an unrelated forum with jury
14 duty; and (6) plaintiff's choice of forum.

15 First, although BdM does not identify the exact number and
16 names of all its potential witnesses at this early stage in the
17 litigation, BdM does make it clear that nearly all reside in the
18 San Diego area. (See Def's. Memorandum of Points and Authorities
19 ("Def's. Mem. of P & A") at 9-10.) Although the State identifies
20 four potential witnesses located in Sacramento, even the State's
21 attorney is located in San Diego. Accordingly, the relatively
22 small burden placed on the State by transferring this matter to
23 the Southern District is far outweighed by the substantial
24 inconvenience to BdM's parties, witnesses, and relevant evidence,
25 almost all of which are located in San Diego. (See id.)

26 Second, since the trademark dispute has essentially no
27 connection to this district, the Southern District of California
28 has a substantially stronger interest in adjudicating this

1 inherently local matter. The Southern District is the situs of
2 nearly all of the operative facts underlying the State's
3 trademark claims, and the effect of the requested injunctive
4 relief, if granted, would primarily be felt in San Diego.

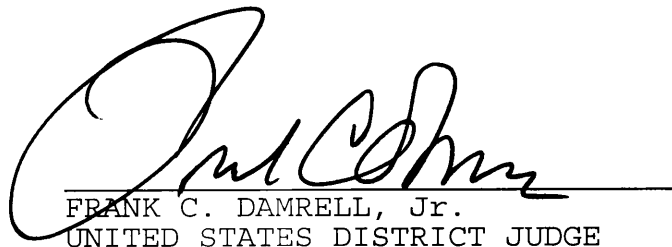
5 Finally, BdM contends that the Southern District is a more
6 appropriate forum given that a related case, Bazaar Del Mundo,
7 Inc. v. Delaware North Companies Parks and Resorts, et. al, Case
8 No. 03-CV-2284 W (LSP), decided by the Southern District and
9 involving the same central issue of the ownership of the two
10 trademarks, is currently pending before the Ninth Circuit Court
11 of Appeals. (See Def's. Reply at 7.) In the interests of
12 judicial economy and consistency of judgments, the Southern
13 District of California should adjudicate this matter since it
14 involves the same central issue as the prior case.

15 **CONCLUSION**

16 For the foregoing reasons, defendant's motion to transfer
17 venue pursuant to 28 U.S.C. section 1404(a) is GRANTED. This
18 matter shall be transferred to the Southern District of
19 California.

20 IT IS SO ORDERED.

21 DATED: November 3, 2004

22 
FRANK C. DAMRELL, Jr.
23 UNITED STATES DISTRICT JUDGE
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27
28

United States District Court
for the
Eastern District of California
November 4, 2004

* * CERTIFICATE OF SERVICE * *

2:04-cv-01533

Dept of Parks

v.

Bazaar Del Mundo

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 4, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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